Supreme Court, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-2024

URBATEC, a California corporation,

Petitioner,

vs.

YUMA COUNTY, an Arizona County,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1979

No._____

URBATEC, a California corporation,
Petitioner,
v.
YUMA COUNTY, an Arizona County,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Petitioner Urbatec, a California corporation, prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Ninth Circuit entered in the above case on January 14, 1980.

OPINIONS BELOW

The Opinion of the Court of Appeals for the Ninth Circuit is reported at 614 F.2d 1216. There is no opinion for the

District Court for the District of Arizona.

JURISDICTION

The judgment of the Court of Appeal, set forth in the Appendix hereto at pp. 1-12 reversing the District Court was entered on January 14, 1980; and the order denying Petitioner's request for a rehearing and/or a rehearing en banc set forth in the Appendix hereto at pp. 13-14 was entered on March 24, 1980.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

QUESTION PRESENTED

Does the ruling of the court below that holds that a building contractor licensed in California must first be licensed in Arizona before it could submit a proposal to develop and construct federally subsidized housing in Yuma, Arizona, under the Federal housing laws and under the comprehensive regulations and guidelines of the Department of Housing and Urban Development ("HUD") constitute error in

that it conflicts with federal law and regulations in the area of developing federal housing and, thus, does the court's ruling violate the Supremacy Clause and the Commerce Clause of the United States Constitution?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitutional Provisions involved are : (1) the Supremacy Clause of the United States Constitution which states in Article VI: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." and (2) the Commerce Clause, which states in Article I §8: "The Congress shall have Power. . .to regulate Commerce. . .among the several States. . ."

The Statutes involved are:

1. Ariz. Rev. Stat. § 32-1151 which provides in pertinent part: "It is unlawful for a person, firm, partnership, corporation, association or other organization, or a combination of any of them, to engage in the business, act or offer to act in the capacity, or purport to have the capacity of a contractor without having his own license in his own name therefor as provided in this chapter, unless the person, firm, partnership, corporation, association or other organization is exempt as provided in this chapter.", and

2. Ariz. Rev. Stat. § 32-1122(B) which provides in pertinent part: "[A license applicant] . . . shall not have engaged in the contracting business nor shall he have submitted a bid within one year prior to making the application on any contracting work without first having been issued a license as required by this chapter."

STATEMENT OF THE CASE

On April 27, 1972, the City of Yuma,

Arizona, passed a Resolution recognizing a shortage of housing for low-income people in Yuma and soliciting HUD to provide every assistance available "on behalf of this request for said urgently needed housing. . ." (R 59)

On May 1, 1972, the Board of Supervisors of the County of Yuma, Arizona passed a resolution stating, inter alia, (1) that there is a need for low-rent housing to meet needs not adequately met by private enterprise, (2) that the Executive Director of its Housing Authority shall apply to HUD for 120 units of low-rent public housing to be provided by new construction by the Turnkey method, and (3) that it would comply with the requirements and regulations of HUD. (R 59-60)

The Housing Authority ("The Authority"), pursuant to HUD regulations and guidelines, advertized on May 2, 1972 its invitation to developers and sent invitations to developers to submit proposals for the development of said 120 units pursuant to HUD regulations. (R 60)

Petitioner is a California corporation specializing in the development of low-

rent housing under the federal housing laws. It is licensed as a contractor in California. Petitioner responded to said invitation to submit proposals and its proposal was approved by The Authority from among five competing proposals on May 31, 1972. (R 60) Petitioner's proposal consisted of specific sites for the project to be purchased by Petitioner as well as design and cost elements. (R 60) On June 5, 1972, HUD further approved Petitioner as the developer and approved Urbatec's proposal. (R 61) Said approvals were subject to certain conditions which Urbatec fulfilled. (R 56) Thereafter on June 21, 1972, the Board of Supervisors of Respondent Yuma County, with knowledge of the said approvals by HUD and by The Authority, executed a Cooperation Agreement with HUD which provided, inter alia that Respondent would execute an Annual Contributions Contract to establish the financial arrangement for the project. (R 62) From June 1, 1972 through on or about November 10, 1972, Petitioner, The Authority and HUD worked closely together and diligently to complete the planning and deve-

lopment of the project, including the establishment of an agreed upon schedule for its completion. (R 65)

On November 8, 1972, The Authority resolved to withdraw its application for Turnkey public housing and on December 4, 1972, the Yuma Board of Supervisors concurred in such withdrawal and further resolved to reject the application "solely on the basis of site." (R 68) Urbatec brought suit against Yuma County in the United States Distict Court for the District of Arizona for breach of contract. Jurisdiction in the trial court was based upon diversity of citizenship. The District Court found that the rejection by the Board of Supervisors on December 4, 1972 was not based on site only, but was "an illegal and discriminatory act arising out of opposition on the part of Yuma citizens to having a low-income federally subsidized housing project to be occupied by persons qualified for federal housing subsidies including black or brown persons in the City of Yuma (R 68-69) and that said actions by The Authority and Respondent constituted a breach and repu-

diation of its contract with Petitioner" (R 69). Petitioner was awarded judgment against Respondent in the principal amount of $256,766.00 on July 12, 1976.

Respondent appealed said judgment and on January 14, 1980 the Court of Appeals for the Ninth Circuit reversed the District Court on the singular basis that Petitioner was required to be licensed as a contractor in Arizona before presenting a proposal in response to the invitation for proposals for the subject Federal Turnkey housing project and indicating by way of footnote that such holding could not frustrate any federal interest. (Appendix at p. 11)

Petitioner filed a Request for Rehearing and/or Rehearing en banc in January 25, 1980, and said Petition was denied on March 24, 1980. (Appendix pp. 13-14)

REASONS FOR GRANTING THE WRIT

The decision below should be reviewed because it ignores the role of comprehensive federal regulations and guidelines that (1) have the force of law and (2)

govern the manner in which federally subsidized low-rent projects are to be considered and approved and the manner in which developer-contractors are to be determined to be qualified to build in the federal program. Previous Participation (Form 2530) Clearance Procedure for Low-Rent Public Housing, from Circular HPMC-FHA 7410.10 reflects the federal procedure under which Petitioner was determined to be qualified by HUD on the subject project. (Exhibit 5A)

To permit such a state statute to control the qualification procedure would not only interfere with the established procedures of HUD, which Congress has authorized to oversee the development of federally subsidized housing, but it will exclude qualified specialists in federal housing licensed in other states from submitting proposals to build federally subsidized projects without first qualifying for a local state license in that the local statute in the instant case requires as a condition of licensing that no bid has been submitted in Arizona within one year prior to applying. Ariz.

Rev. Stat. § 32-1122(B), supra. and one must be licensed to submit a bid. Ariz. Rev. Stat. § 32-1151, supra. (An out of state contractor would not be able to respond to an invitation such as the one in the within matter in all likelihood in that only 28 days lapsed from the date of invitation to the date of submittal. (R 3) In this 28-day period the developer-contractor is required under HUD requirements to submit the proposed site or sites, preliminary architectural designs and drawings, and cost projections. (R 3-5) (Exhibit 6))

The Arizona licensing statutes effectively precludes from competition in Arizona out-of-state contractors at the initial stage of any development requiring the presentation of competative bids or proposals, prior to the commencement of actual construction.

Federal housing law establishes a comprehensive scheme for federal involvement in the development of low rent public housing. Cuyahoga Metropolitan Housing Auth. vs. City of Cleveland, 474 F.2d 1102 (6th Cir., 1973). In 42 U.S.C. § 1401, there is a strong declaration of

federal interest in low-rent housing projects recognizing that there is a national need for federal involvement in this area. HUD, which regulates the low-rent housing program pursuant to 42 U.S.C. § 3534(a), has its congressional declaration of purpose clearly identified in 42 U.S.C. § 3531, to wit: "To assist the President in achieving maximum coordination of the various federal activities which have a major effect on urban community, suburban, or metropolitan development, to encourage the solution of problems of housing, urban development, and mass transportation through State, County, town, Village, or other local and private action, including promotion of interstate, regional, and metropolitan cooperation."

The Developers Handbook distributed to prospective developers and/or builders on the subject project (Exhibit 5A) required proposals to include: "A statement of the developer's and/or builder's qualifications and experience which shall include: 1. An outline of the proposed management framework, including lines of responsibility and authority. 2. A list

of key individuals, responsibility and authority, and a brief resume of experience and qualifications for HUD work. 3. A plan outlining rate of staffing the various disciplines. 4. Experience of the organization over past three years on similar Turnkey Work. 5. Schedule showing the tasks required to implement and complete the entire project and the milestones to be achieved at various intervals of time in order to complete the project in the period stipulated by the Proposer. 6. A statement of the financial position and ability to obtain interim financing."

HUD's Low-Rent Housing Turnkey Handbook of June, 1969, called a "HUD Handbook" and designated as RHA 7420.1 (Exhibit 5A) was also followed by Petitioner and other interested developers in the subject Yuma County housing project. These HUD regulations require open competition for prospective developers to become qualified under expressed and clearly defined federal guidelines without any requirements whatsoever to become licensed under <u>local</u> statutes. Page 1, Paragraph 1, Low-Rent Housing Turnkey

Handbook. (Exhibit 5A) On page 2 under No. 3 thereof entitled "Inviting Proposals" the text reads in subparagraph (a): "Proposals shall be publicly advertised with respect to all turnkey projects to insure that all interested parties have the opportunity to participate. In addition to meeting the advertising requirements, other methods of invitation may be used, such as solicitation of trade associations." Therefore, open and unrestricted invitations to prospective developers is basic to and is the stated policy of the federal housing program, and Urbatec was so invited to participate pursuant to this federal policy.

It is beyond disputing that comprehensive federal standards are employed in the final selection and approval of the developer-contractor by the federal agency involved. This evidences the strong federal interest in the selection of the developer-contractor and also evidences a difference in federal and state requirements in such selection. However, the Housing Authority of the County of Yuma did concur with the federal

authority, HUD, on the selection of Petitioner. The comprehensiveness of the federal scheme conflicts with any requirement of licensing by the State of Arizona in qualifying for and being selected as a developer and contractor in the federal low-rent housing program.

In Public Utilities Commission of State of California vs. United States, 355 U.S. 534, 78 S.Ct. 446, 2LEd 2d 470 (1958) the United States Supreme Court stated at 355 U.S. 542: "regulations adopted pursuant to federal statutes have the force of law." Thus, HUD regulations, which have been developed pursuant to federal statutes, have the force of law as to federally subsidized low-rent housing programs. (Neither Nothen vs. Elledge 72 Ariz. 166, 232 P.2d 111 (1951) nor Hunt vs. Douglas Lumber Co. 41 Ariz. 276 P.2d 815 (1933) used as authority in reversing the judgment of the trial court in this action involved contracts with the federal government.)

Miller vs. Arkansas 353 U.S. 187, 1 LEd 2d 231, 77 S.Ct. 257 (1956) involves a state licensing statute that obstructed federal interest, as in the present case.

In Miller, an unlicensed person in Arkansas submitted a bid in violation of Arkansas law for a federal government contract. The United States accepted the person's bid and the unlicensed person began work on the project. The person was fined and brought the action to court. The United States Supreme Court found that application of the Arkansas statute to this contractor interferred with the federal government's power to select contractors and schedule construction and was in conflict with the federal law regulating procurement. The quote at page 190 is particularly important: "Subjecting a federal contractor to the Arkansas contractor license requirements would give the State Licensing Board a virtual power of review over the federal determination of 'responsibility' and would thus frustrate the federal policy of selecting the lowest responsible bidder." The same harm arises from the lower court decision in this case in that the interest of the federal government in having open competition among developers-contractors specializing in the federal housing program and experienced in

compliance with the design requirements, cost allowance and federal procedures is frustrated. HUD made the final approval of the developer-builder on this project, selecting Petitioner. The imposition of the Arizona licensing statute negates the approach and goals of the federal housing program.

In Electric Construction Company vs. Flickinger 107 Ariz. 222, 485 P.2d 547 U.S. Cert. denied in 404 U.S. 952 (1971), the Arizona Supreme Court held that a California corporation, unlicensed in Arizona, who was a subcontractor and who performed work for a general contractor on an Air Force base in Tucson, Arizona, was not required to obtain the state contractor's license even though the government did not make a direct determination of the subcontractor's responsibility.

The Arizona Supreme Court stated: "Obviously, where the government makes a direct determination of a subcontractor's responsibility, Miller vs. Arkansas would be controlling; but where the federal government does not make a direct determiinaation, can the principal of the

case extend to a subcontractor to relieve him from complying with the state Law? We think so." supra at P. 548. The Court further stated at page 549: "It is not the fact that there may not be conflict concerning subcontractor's responsibility; it is the fact that there may be."

In Electric Construction, supra, the Court stated re the issue of conflict between the state and federal regulations: "Arizona's qualifications would result in the identical conflict which was found to frustrate the federal policy of selecting the lowest possible bidder whenever the government makes a direct determination of a prospective subcontractor."(supra, at p. 549)

As to determining congressional purpose and the issue of federal preemption, the case of Ray vs. Atlantic Richfield Company 435 U.S. 151, 55 LEd 2d 179, 98 S.Ct. 988 (1978) stated at page 157: "The congressional purpose may be evidenced in several ways. The scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the state to

supplement it. . .or the act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject. Likewise, the object sought to be obtained by the federal government and the character of obligations imposed by it reveal the same purpose." (Citations omitted.) In the above case, portions of the Washington Tanker Law were invalidated which required enrolled tankers to carry state-licensed pilots and which imposed state requirements on design and construction of tankers. The Supreme Court's language in 435 U.S. at page 158 is instructive: "Even if Congress has not completely foreclosed state legislation in a particular area, a state statute is void to the extent that it actually conflicts with a valid federal statute. A conflict will be found where compliance with both federal and state regulation is a physical impossibility . . .or where the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (Citations omitted.)

The statutes of California and Arizona are similar regarding licensing requirements of building contractors.

In Miller vs. Superior Court in and for the County of Pima, 8 Ariz. App. 420, 466 P.2d 699 (1968) the Arizona Court of Appeals stated at 702: "In the California statutory counterpart of our Section 32-1101, Section 7026, Anno Business and Professional Code, the definition of a contractor is almost identical in language to our definition." Thus, there are no significant differences between the licensing requirements in Calfifornia and those in Arizona and so the state purpose in this case would not seem to be substantial when compared to federal interests in obtaining the lowest and best housing development proposal under federal regulations and statutes. Each proposal is judged on site location, design, amenities, developer qualifications, and purchase price. To allow state licensing laws to preclude selection of an overall housing proposal that is otherwise acceptable under federal law would create a real obstacle to the federal program and defeat the

objectives of national policy. In contrast, allowing qualified and skilled contractors to participate in the federal housing program frustrates no state purpose in this regard since federal regulations are comprehensive and designed to protect the public. There is no adverse impact upon Arizona in making inapplicable its licensing provisions upon contractors who participate in federally funded housing programs. Under Sperry vs. Florida 373 U.S. 379, 10 LEd 2d 428, 83 S.Ct. 1322 (1963), such a minor incursion on the states power must give way to permit the substantial federal interest and program to proceed.

It even admitted in Appellant's briefs that new Arizona laws were passed to circumvent the ruling in Westinghouse Electric Corporation vs. Rhodes, 97 Ariz. 81, 397 P.2d 61 (1964).

The entire statutory scheme, including portions that predate Westinghouse, forbid a contractor from applying for an Arizona license if he has bid on a project in Arizona within one year prior to applying. Ariz. Rev. Stat. § 32-1122. Thus, an out-of state contractor who wins

a bid and then seeks to be licensed in Arizona to perform is precluded from obtaining a license. This constitutes an undue burden on interstate commerce. It is discriminatory against foreign state competition and therefore unconstitutional and void under the Commerce Clause. Polar Ice Cream vs. Andrews, 375 U.S. 361, 111 LEd 2d 389, 84 S.Ct. 378.

To avoid such interference with the goals and procedures of the housing program of the United States government and to attract competitive participation in the program among the maximum number of qualified builders, the petition for certiorari should be granted.

CONCLUSION

The petition for certiorari should be granted.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
Jan 14 1980

URBATEC, a California corporation, Plaintiff-Appellee,	
vs.	CA No. 76-3299
YUMA COUNTY, an Arizona County, Defendant-Appellant.	DC CIV No. 59 PHX

OPINION

Appeal from the United States District Court for the District of Arizona

Before: TRASK and HUG, Circuit Judges, and BOHANON,* District Judge

TRASK, Circuit Judge:

Plaintiff-Appellee Urbatec, a California corporation specializing in the development of subsidized housing projects, sued Yuma County, Arizona for

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*Honorable Luther L. Bohanon, United States District Judge for the Northern, Eastern & Western Districts of Oklahoma, sitting by designation.

breach of contract. Yuma County had invited proposals for the construction of 120 units of federally subsidized housing and tentatively accepted Urbatec's proposal by a letter dated June 14, 1972. Urbatec contends that this letter, together with Urbatec's proposal for the project, constitute a contract which was breached by Yuma County when, on November 10, 1972, it informed Urbatec that it should take no further action on the project. On December 4, 1972, the Yuma County Board of Supervisors formalized this decision by rejecting the project. As of December 4, 1972, Urbatec was not licensed as a contractor in Arizona, nor had it qualified as a foreign corporation doing business in Arizona.

The action was tried to the district Court sitting without a jury. Jurisdiction in the trial court was based upon diversity of citizenship. In its Findings of Fact and Conclusions of Law, that court concluded that the letter of June 14 did constitute a contract, that Yuma County breached that contract, and that Urbatec was damaged to the extent of $256,766 in expenses and lost profits.

The district court concluded that as of December 4, 1972, when Yuma County refused to proceed with the project, Urbatec was required neither to have a contractor's license, nor to have qualified as a foreign corporation doing business in Arizona. Judgment for Urbatec was entered on July 12, 1976, to the full extent of its damages.

Yuma County brings this appeal from the district court's judgment pursuant to 28 U.S.C. § 1291, raising a number of issues. Because we hold that Urbatec was required by Arizona law to have a contractor's license prior to submitting its proposal, we reverse.

I

Ariz. Rev. Stat. § 32-1151 provides in pertinent part:

> It is unlawful for a person, firm, partnership, corporation, association or other organization, or a combination of any of them, to engage in the business, act or offer to act in the capacity, or purport to have the capacity of a contractor without having his own license in his own name therefor as provided in this chapter,

unless the person, firm, partnership, corporation, association or other organization is exempt as provided in this chapter. (emphasis supplied).

The term "contractor" is defined by Ariz. Rev. Stat. § 32-1101 to mean:

> [A] person, firm, partnership, corporation, association or other organization, or a combination of any of them, who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structure or works in connection therewith. (emphasis supplied).

These provisions have been construed as barring any suit to recover for services for which a license is required. Northen v. Elledge, 72 Ariz. 166, 232 P.2d 111 (1951); Hunt v. Douglas Lumber

Co., 41 Ariz. 276, 17 P.2d 815, 819-20 (1933). This bar on actions by unlicensed contractors has also be codified.[1]

Urbatec contends, however, that the licensing requirement is not applicable until actual construction commences, citing Westinghouse Electric Corp. v. Rhodes, 97 Ariz. 81, 397 P.2d 61 (1964). Urbatec's argument is unconvincing. In Westinghouse Electric, the court was concerned with a different statute, Ariz. Rev. Stat. § 32-1122, which sets forth

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1. Ariz. Rev. Stat. § 32-1153 provides in part:

> No contractor shall act as agent or commence or maintain any action in any court of the state for collection of compensation for the performance of any act for which a license is required by this chapter without alleging and proving that the contracting party whose contract gives rise to the claim was a duly licensed contractor when the contract sued upon was entered into and when the alleged cause of action arose.

the requirements for obtaining a contractor's license. One of those requirements, paragraph 3 of subsection B, § 32-1122,[2] disqualifies any contractor who "engaged in the contracting business without obtaining a license as required by this chapter within one year prior to making the application." The court in Westinghouse Electric concluded that "engaged in the contracting business" meant more than merely negotiating or submitting a bid. The court limited the meaning of the phrase to "acts of construction pursuant to an agreed undertaking." Westinghouse Electric, 397 P.2d at 63. Urbatec, however, can take no comfort from this holding. First, the statutes barring it from suing for damages are sections

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2. Ariz. Rev. Stat. § 32-1122 was repealed by Ch. 113, § 6 1975 Ariz. Sess. Laws. Section 32-1122 was reenacted by the 1975 act in an amended form so that subsection (E) of section 32-1122 now relates to the same subject matter as the earlier subsection (B) ¶3.

32-1101, 1151, and 1153, not section 32-1122. In fact, the court in Westinghouse Electric, in comparing the language of the statutory provisions, noted that the application of sections 32-1101 and 1151 was considerably broader than that of section 32-1122. Second, and more important, section 32-1122 was amended after the Westinghouse Electric decision to broaden its application and make it expressly applicable to contractors who do no more than submit a bid. See Chapter 66, H.B. 171 § 1, 1965 Ariz. Sess. Laws.[3]

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3. The legislature amended the pertinent provisions of Ariz. Rev. Stat. § 32-1122(B) ¶3 to provide:

> [A license applicant] . . . shall not have engaged in the contracting business nor shall he have submitted a bid within one year prior to making the application on any contracting work without first having been issued a license as required by this chapter.

Ch. 66 § 1 1965 Ariz. Sess. Laws (emphasis supplied).

Consequently, under Ariz. Rev. Stat. §§ 32-1101 and 1151, Urbatec violated Arizona law by submitting its proposal without first obtaining a contractor's license, as provided in section 32-1153, and, that violation precludes Urbatec from suing for compensation for its contracting services. The impact of that violation on Urbatec's ability to obtain a license during the ensuing year (the issue decided in Westinghouse Electric), is not relevant here since the contract is void ab initio. Hunt v. Douglas Lumber Co., supra. The inability of Urbatec to sue for compensation precludes not only actions grounded in contract, but those founded on a theory of promissory estoppel as well. Permitting Urbatec to recover on promissory estoppel grounds would circumvent the policies of the licensing statute.

> The purpose of licensing building contractors is for the protection of the public. Northen v. Elledge, 72 Ariz. 166, 232 P.2d 111 (1951). The legislature gave to the Registrar of Contractors the duty to require that those involved in constructions of

> structures and improvement to real property have the required skill, training and ability to accomplish such construction in a safe and workmanlike fashion.

Arnold Construction Co. v. Arizona Board of Regents, 109 Ariz. 495, 512 P.2d 1229, 1232 (1973).

In addition, the licensing statutes require insurance, Ariz. Rev. Stat. § 32-1122(B)(2), and surety bonds, Ariz. Rev. Stat. § 32-1152. All of these requirements, taken together, are designed to protect members of the general public without regard to the impact upon individual contractors. See Murphy v. Campbell Investment Co., 79 Wash. 2d 417,486 P.2d 1080, 1087-88 (1971) (Stafford, J., dissnting) (construing licensing statute substantially similar to Arizona's). Permitting Urbatec to recover on promissory estoppel grounds would circumvent these policies of protecting the public from unscrupulous, unqualified, or underinsured contractors.

In Northen v. Elledge, 72 Ariz. 166, 232 P.2d 111 (1951), an action was

brought on grounds of quantum meruit. The court held that action, instituted to recover the value of goods and services rendered, barred by the licensing statute, saying:

> It may be urged that the court should exercise its equitable discretion and permit the plaintiff recovery even in face of a specific prohibition in the statute on the ground that an unreasonable forfeiture would result. However, the statute requiring a contractor to possess a contractor's license before he may recover for work done was designed for the protection of the public and must not be defeated in order to accommodate one who has violated the provisions of the statute. Permitting an unlicensed contrator to recover on the ground that a loss would result to him otherwise would completely nullify the statute since every unlicensed contractor would sustain a loss or forfeiture unless he were allowed recovery. The remedy, if any, lies with the legislature. As the law stands, the court cannot countenance

such a result.

Northen, 232 P.2d at 116. Similarly, this court cannot approve a judgment in favor of Urbatec whether based upon contract or promissory estoppel. Urbatec's failure to obtain an Arizona contractor's license before submitting its proposal renders any agreement or promise void and no suit may be sustained thereon.[4] The judgment of the district court is REVERSED.

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4. It has been suggested that the Arizona Supreme Court's decision in Electric Construction Co. v. Flickinger, 107 Ariz. 222, 485 P.2d 547 (1971) renders the state licensing statutes inapplicable to Urbatec. We disagree. Unlike the contractor in Flickinger, Urbatec is not a subcontractor of the federal government, but a contractor of the State of Arizona. Applying the state licensing statute in this case could not frustrate any federal interest and would advance the state's proprietary interest in choosing its own contractor, as well as safeguard the public welfare. The

limited federal interest involved would be similarly advanced. There being no actual or potential conflict with federal interests, the Arizona licensing statutes are applicable to Urbatec.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

URBATEC, a California corporation, Plaintiff-Appellee, vs. YUMA COUNTY, an Arizona county, Defendant-Appellant.

Mar 24 1980

No. 76-3299

O R D E R

Before: TRASK and HUG, Circuit Judges, and BOHANON,* District Judge

The panel has voted unanimously to deny the petition for rehearing. Judge Hug has voted to reject the suggestion for rehearing en banc. Judges Trask and Bohanon recommend the rejection of the suggestion for rehearing en banc.

The full court has been advised of the suggestion for an en banc hearing, and no

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*Honorable Luther L. Bohanon, United States District Judge for the Northern, Eastern & Western Districts of Oklahoma, sitting by designation.

judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-2024

URBATEC, a California corporation,

Petitioner,

vs.

YUMA COUNTY, an Arizona County,

Respondent.

SUPPLEMENTAL APPENDIX

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FILED
Jun 13 1120 AM '76

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

URBATEC, a California corporation,	
Plaintiff,	CIV. NO. 73-159 PHX (WEC)
v.	FINDINGS OF FACT CONCLUSIONS OF LAW AND JUDGMENT
YUMA COUNTY, an Arizona County; D. H. TRIGG, F. A. DELAUGHTER, GORDON D. DONALDSON and WALTER R. JOHNSON,	
Defendants.	

This cause came on regularly for trial on May 25, 1976, before the Court, sitting without a jury, the Honorable Walter E. Craig, Judge presiding, Schuman, Novak & Cooper by and through Mark S. Novak and Lewis and Roca by and through Tom Karas appeared as counsel for Plaintiff, and David S. Ellsworth, Esquire, appeared as counsel for Defendants. The Court having heard the testimony and having examined the proof offered by the respective parties, and the cause having been submitted for decision, and the Court being fully advised in the premises makes its findings of fact as follows:

FINDINGS OF FACT

The Court finds that:

1. The Court has jurisdiction over the parties and the subject matter of this action.

2. Defendant County of Yuma, Arizona, ("County") is a political subdivision of the State of Arizona. (Pre-Trial Order, Agreed Fact No. 2.)

3. On May 2, 1955, the County duly created, as an agent of the County, an Authority known as The Housing Authority of the County of Yuma ("Authority") and delegated to it the power to construct, maintain, operate and manage any housing project of County and to exercise all other powers conferred on Yuma County, Arizona by the Municipal Housing Law and Chapter 46, Session Laws of 1943, Regular Session, approved March 18, 1943, with the exception of powers to borrow money, issue bonds, and acquire real property. (Plaintiff's Exhibit 1.)

4. On April 27, 1972, the City of Yuma passed its Resolution No. 1712 recognizing a shortage of housing for low-income people in Yuma and soliciting the Department of Housing and Urban Development, United States Government, ("HUD") to provide every assistance available "on behalf of the request for said urgently needed housing by the Yuma County Housing Authority." (Plaintiff's Exhibit 2.)

5. On May 1, 1972, the Board of Supervisors of County duly passed its resolution providing, among other things,

(a) That there is a need for low-rent housing to meet needs not adequately met by private enterprise.

(b) That the Executive Director of the Housing Authority shall cause to be prepared and shall sign and send to the Secretary of Housing and Urban Development an application for financial assistance for 120 dwelling units of low-rent public housing to be provided by new

construction by the Turnkey method and for a preliminary loan in the amount of $48,000.

(c) That in connection with the development and operation of any program or activity receiving federal financial assistance, the Housing Authority of the County of Yuma will comply with all requirements imposed by Title VI of the Civil Rights Act of 1964 and the regulations and requirements of the Department of Housing and Urban Development ("HUD"). (Plaintiff's Exhibit 3).

6. On May 1, 1972 the County duly passed a second resolution providing, among other things, that County would enter into one or more contracts with HUD for loans and annual contributions in connection with the development and administration of low-rent housing, and providing that the County "acting by and through the Authority shall endeavor (a) to secure a contract or contracts with the Government for loans and annual contributions covering one or more projects comprising approximately 400 units of low-rent housing and (b) to develop and administer such project or projects, each of which shall be located within the County." (Plaintiff's Exhibit 4).

7. Said 120-unit low-rent Turnkey Project became known as Yuma 13-3 ("The Project").

8. Thereafter and on May 2, 1972 the Authority advertised its invitation and sent invitations to developers for proposals for the construction of 120 units pursuant to the HUD Turnkey regulations. (Pre-Trial Order Agreed Fact No. 7).

9. Five companies including Plaintiff, submitted proposals to the Authority on or before May 30, 1972. (Plaintiff's

Exhibit 6).

10. On May 31, 1972, the Authority, after considerable discussion of cost, design and criteria as specified by HUD, duly selected Plaintiff Urbatec, a California corporation, as the developer and approved its proposal. (Plaintiff's Exhibit 6; Pre-Trial Order, Agreed Fact No. 1).

11. The Chairman of the County's Board of Supervisors and one member of the Board of Supervisors, Glenn Strohm and Ramon Avila, respectively, were present at the Authority's May 31, 1972 meeting when Urbatec's proposal was accepted. (Plaintiff's Exhibit 6).

12. Urbatec's proposal consisted of the following elements:

(a) 93 of the units were to be placed on two sites at Virginia Drive and 27th Street on land already zoned for multi-family development and for density as proposed in the Urbatec proposal, and 27 of the units were to be placed at a site at 12th Avenue and 22nd Street where re-zoning by the City of Yuma for the proposed use would be required. (Plaintiff's Exhibit 5A).

(b) The total cost for the completed Urbatec project would be $2,612,450 consisting of land costs at $190,000; site improvements at $235,000; dwelling construction at $1,727,400; dwelling equipment at $42,000; non-dwelling construction at $120,900; non-dwelling equipment at $2,900; architectural and engineering services at $29,250; taxes, interim financing and closing costs at $125,000; site acquisition costs at $25,000; and developer's fee and overhead at $75,000. (Plaintiff's Exhibit 5).

13. After May 31, 1972, HUD reviewed

and evaluated the five proposals received by the Authority, and on June 5, 1972, HUD sent its letter to the Authority concurring in the Authority's selection of Urbatec's proposal at the price of $2,612,450 subject to the following conditions:

(a) The total cost of the sites alone shall not exceed the appraised value of each parcel, and

(b) The cost of the improvements (excluding land) shall not exceed the mid-point of the two independent cost estimates. (Plaintiff's Exhibit 8).

14. In 1972 Urbatec was a specialist in the design, development and construction of federally subsidized housing projects.

15. On June 12, 1972 the Authority informed the Board of Supervisors of County by letter of HUD's concurrence in the recommendation of the Authority in the selection of the proposal submitted by Urbatec, subject to the following conditions:

The total cost of the sites alone shall not exceed the appraised value of each parcel and the cost of the improvements (excluding land) shall not exceed the midpoint of two independent cost estimates. (Plaintiff's Exhibit 10).

16. The Authority's letter of June 12, 1972 further informed the Board of Supervisors of the specific sites proposed for the project and of the existing zoning for such sites. (Plaintiff's Exhibit 10).

17. On or about June 12, 1972 the County, through its Board of Supervisors, knew of Urbatec's selection, the sites for the project and the proposed cost thereof subject to HUD approval of land

and improvements cost. (Plaintiff's Exhibit 10).

18. The Authority's said letter of June 12, 1972 enclosed a Cooperation Agreement in connection with the low-rent Turnkey project to be adopted by the County of Yuma and the City of Yuma. (Plainfiff's Exhibit 10).

19. On June 21, 1972 the Board of Supervisors duly resolved that said Cooperation Agreement proposed for the County and City of Yuma, Arizona, was approved both as to form and substance. (Plaintiff's Exhibit 11).

20. Glenn H. Strohm, executed said Cooperation Agreement as Chairman of the Board of Supervisors of the County of Yuma on behalf of said Board of Supervisors on June 21, 1972. (Plaintiff's Exhibit 12).

21. The Cooperation Agreement provided, among other things, the County of Yuma shall endeavor to secure a contract or contracts with HUD for loans and annual contributions covering one or more projects comprising 200 units of low-rent housing. (Plaintiff's Exhibit 12).

22. On June 14, 1972 the Authority forwarded to Urbatec its letter approving Urbatec's Turnkey proposal for 120 dwelling units and related apurtenances upon the site situated at 27th and Madison Avenue, 27th and Virginia Drive, 12th Avenue and 23rd Street, Yuma, Arizona. Said letter of approval invited Urbatec to a Feasibility Conference at HUD in Los Angeles to:

(1) Negotiate the purchase price of the land.

(2) Discuss design and HUD requirements, and

(3) Schedule the remaining stages of the Turnkey program.

Said letter further stated: "If the drawings, specifications, and price are satisfactory, they will be submitted to the government with a request for an annual contributions contract under which the acquisition of the property will be financed. The Authority will promptly execute such contract when it is tendered by the government.

"Promptly upon the execution of an annual contributions contract between the government and the Authority the Authority will issue to you a firm Letter of Intent setting forth the conditions under which you will prepare working drawings and specifications and under which you and the Authority will enter into a Contract of sale of the property." (Plaintiff's Exhibit 9).

23. Said approval letter of June 14, 1972 further provided: "In consideration of the agreement of the Authority to take the actions set forth above, and with the knowledge that this letter is issued in reliance upon the developer's statement of disclosure of interest filed with your proposal, your acceptance hereof is your certification and agreement that there has not been any assignment, sale, or any other form of transfer of the property, or an interest therein or of any contract which may result herefrom, and that no such assignment, sale, or transfer will be made without the prior written consent of the Authority and the government. . . If this letter represents your understanding, please sign and return for copies." (Plaintiff's Exhibit 9).

24. Urbatec executed said letter of June 14, 1972 where the developer's

signature blank was provided therefor under the word "Accepted:" on June 22, 1972. (Plaintiff's Exhibit 9).

25. The approval letter of June 14, 1972 was written and executed by Charlene Maloney as Executive Director of the Housing Authority of the County of Yuma.

26. The approval letter was written pursuant to HUD's instructions by its letter of June 5, 1972 to the Authority (Plaintiff's Exhibit 8) and was taken from Appendix 4 of HUD's Circular RHA 7420.1. (Plaintiff's Exhibit 5A).

27. Charlene Maloney's use of the word "Authority" in said approval letter referred to the County of Yuma through its Board of Supervisors, but Charlene Maloney used the words "The Authority" in that those were the exact words used in said Appendix 4.

28. Charlene Maloney believed and understood she had the legal authority to execute said approval letter of June 12, 1972 to Urbatec and in fact had such legal authority in that the Board of Supervisors of the County of Yuma on May 1, 1972, had passed that certain RESOLUTION RELATING TO LOW-RENT HOUSING PROJECTS PROPOSED TO BE DEVELOPED IN THE COUNTY OF YUMA; APPROVING APPLICATION FOR A PRELIMINARY LOAN; DECLARING THE INTENTION OF THE COUNTY OF YUMA TO COOPERATE WITH THE UNITED STATES OF AMERICA ACTING THROUGH THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT IN THE DEVELOPMENT OF AND OPERATIONS OF THE PROJECTS, which resolutions specifically set forth at Paragraph 2 thereof: "[The County of Yuma] acting by and through the local authority shall endeavor (a) to secure a contract or contracts with the Government for loans and annual

contributions covering one or more projects comprising approximately 400 units of low-rent housing and (b) to develop and administer such Project, or Projects, each of which shall be located within the County of Yuma." (Plaintiff's Exhibit 4).

29. It was the understanding of the Authority and Urbatec that the June 14, 1972 approval letter was subject to the following conditions: The approval of the purchase price of the land, HUD and the Authority's approval of project design and Urbatec's compliance with HUD requirements and the scheduling of the remaining stages of the Turnkey program.

30. The terms of the firm Letter of Intent and the Contract of Sale referred to in said approval letter of June 14, 1972, did not remain to be negotiated in that they were set forth verbatim in Appendices 10 and 12, respectively, of HUD Low-Rent Turnkey Handbook Circular RHA 7420.1 which regulated the Project. (Plaintiff's Exhibit 5A).

31. Said letter of June 14, 1972 (Plaintiff's Exhibit 9) constituted a contract between Plaintiff and Defendant County of Yuma.

32. From June 1, 1972 through on or about November 10, 1972, with the exception of a brief period in July, 1972, the Authority, HUD and Urbatec worked closely together and diligently to complete the planning and development of The Project and to comply with all requirements of the Authority and HUD as to costs, drawings, and specifications.

34. Urbatec, the Authority and HUD agreed on a schedule for the remaining stages of the Turnkey program on June 22, 1972. (Plaintiff's Exhibit 14).

34. On July 10, 1972 HUD informed the

Authority by letter that the acquisition prices of the three sites proposed for the Turnkey project by Urbatec were approved. (Plaintiff's Exhibit 10).

35. By October 24, 1972, HUD and the Authority had approved the project design and preliminary drawings after Urbatec complied with the Authority's and HUD's requirements expressed in conferences among HUD representatives, Authority representatives and Urbatec representatives on June 22, September 20 and September 21, 1972. (Plaintiff's Exhibits 6, 25, 28 and 29).

36. Urbatec fulfilled all the conditions required of it in the June 4, 1972 approval letter.

37. On or about July 12, 1972, certain persons in the City of Yuma raised objections to the construction of The Project on the sites selected by the Authority, the County and approved by HUD. (Plaintiff's Exhibit 16).

38. On August 31, 1972 the Authority forwarded to the Board of Supervisors of the County the proposed documentation required by HUD for the adoption of the annual contributions contract for the financing of the purchase of The Project. (Plaintiff's Exhibit 22).

39. On November 2, 1972 the Authority requested that Urbatec prepare final plans and specifications. (Plaintiff's Exhibit 30).

40. The County of Yuma is bound to its promises set forth in said approval letter of June 14, 1972, in that said promises reasonably could be expected to and did in fact induce action of a substantial and definite character by Urbatec, and injustice can be avoided in this case only by enforcement of the

County's said promises.

41. The Housing Authority of the County of Yuma did not intend to, and did not attempt to, exceed its legal authority in the development of The Project. D. H. Trigg, F. A. Delaughter, Gordon V. Donaldson and Walter R. Johnson, as Commissioners of the Housing Authority of the County of Yuma did not intend to, and did not attempt to, exceed their authority in the development of The Project.

42. Defendants D. H. Trigg, F. A. Delaughter, Gordon V. Donaldson and Walter R. Johnson were duly appointed members of the Housing Authority in November and December, 1972 and were residents of the County of Yuma, State of Arizona.

43. That Charlene Maloney, as Executive Director of the Housing Authority did not intend to, and did not attempt to, exceed her legal authority in the development of the proposed Turnkey project.

44. At all times relevant to the subject litigation, the Housing Authority of the County of Yuma was the duly authorized agent of the County for the construction, maintenance, operation and management of housing projects in Yuma County. (Plaintiff's Exhibit 1).

45. By virtue of the County's Resolutions of May 2, 1955 (Plaintiff's Exhibit 1) and May 1, 1972 (Plaintiff's Exhibit 4) the County duly authorized The Authority to do all things reasonable and necessary to secure from HUD a contract or contracts for loans and annual contributions for The Project and to develop and administer The Project.

46. The Authority and Charlene

Maloney, as its Executive Director, were acting within the scope of said agency and authority as to all the acts they performed to develop The Project from May 1, 1972 until November 8, 1972, (when The Authority resolved to cancel The Project) including but not limited to the following acts:

(a) Selecting Urbatec's proposal from among the five proposals submitted. (Plaintiff's Exhibit 6).

(b) Executing the June 14, 1972, approval letter to Urbatec. (Plaintiff's Exhibit 9).

(c) Coordinating the planning and development tasks on The Project to be performed by The Authority, the County, HUD and Urbatec.

(d) Participating in the approval of design factors and specifications with HUD throughout said period and at the conferences of June 22, September 20 and September 21, 1972. (Plaintiff's Exhibit 14 and 25).

(e) Instructing Urbatec on November 2, 1972, to prepare final plans and specifications for The Project. (Plaintiff's Exhibit 30).

(f) Forwarding to The County Board of Supervisors for its approval and signing the documentation required for the Annual Contributions Contract on August 31, 1972. (Plaintiff's Exhibit 22).

47. On November 8, 1972 the Authority resolved to withdraw its application to Turnkey public housing for The Project. (Plaintiff's Exhibit 33).

48. On December 4, 1972 the Board of Supervisors resolved to concur in the resolution of the Authority withdrawing its application for The Project and it

further resolved that the "Board of Supervisors reject the aforesaid application solely on the basis of site. . ." (Plaintiff's Exhibit 38).

49. The action of the Housing Authority of November 8, and of the Board of Supervisors on December 4, 1972, arose out of opposition by certain citizens of Yuma, Arizona to the placing of a low-rent federal housing project on the sites proposed for The Project. (Plaintiff's Exhibit 16, 45 and 46).

50. There were no black or brown persons among the Yuma group which expressed opposition to the sites for The Project.

51. The rejection of The Project was not based on site only, as expressed by the Board of Supervisors, but was an illegal and discriminatory act arising out of opposition on the part of certain Yuma citizens to having a low-rent federally subsidized housing project to be occupied by persons qualified for federal housing subsidies, including black or brown persons in the City of Yuma. (Plaintiff's Exhibit 16, 45 and 46).

52. The Board of Supervisors intended by its December 4, 1972, resolution to reject the Turnkey project regardless of where it was to be located in the City or County of Yuma, Arizona.

53. The County breached and repudiated said contract (Plaintiff's Exhibit 9) by the Authority's resolution of November 8, 1972, (Plaintiff's Exhibit 33) and the County's resolution of December 4, 1972. (Plaintiff's Exhibit 38).

54. On November 10, 1972 the Authority wrote Urbatec, informing Urbatec of its November 8, 1972 resolution to withdraw its application for 120 units of low-rent

housing to be developed by the Turnkey method and further stated: "Any action taken by your firm in connection with the development of the referenced project is done at your own risk." (Plaintiff's Exhibit 37).

55. From June 1, 1972 until on or about November 10, 1972, Urbatec diligently performed everything on its part to be performed on The Project, relying on the County's promises contained in the approval letter of June 14, 1976 [sic]. (Plaintiff's Exhibit 9).

56. On or about November 10, 1972, Urbatec ceased all efforts toward the development of The Project upon its learning of the Housing Authority's resolution to withdraw its application for The Project, thus mitigating damages.

57. As of December 4, 1972 when the Board of Supervisors rejected The Turnkey Project, there was pending before the City Planning and Zoning Commission of the City of Yuma an application for the re-zoning of the site in the City of Yuma on which Urbatec proposed to place 27 units of low-rent Turnkey Housing for The Project.

58. The County of Yuma failed and refused to execute the requisite documents relating to the annual contributions contract as a direct and proximate result of which no federal funds would be available to purchase The Project, i.e. for the County to perform its promises contained in the June 14, 1972 approval letter. (Plaintiff's Exhibit 9).

59. At no time did Urbatec commence construction of the project or move construction equipment onto the sites of The Project.

60. As of December 4, 1972 Urbatec was

not licensed as a building contractor in Arizona (Pre-Trial Order Agreed Fact No. 19).

61. On December 4, 1972 Urbatec had not qualified as a foreign corporation doing business in Arizona (Pre-Trial Order Agreed Fact No. 18).

62. From May 31 through on or about November 10, 1972, Urbatec pursued only the development and completion of The Project and declined to pursue other proposals and invitations for any other housing projects, subsidized or otherwise.

63. Between May 31, 1972 and November 10, 1972, specific opportunities for subsidized housing projects were presented to and available to Urbatec.

64. Urbatec through its general contractor, had studied closely the cost factors involved in the construction of the proposed project during its pendency in 1972.

65. Costs as proposed by Urbatec were within the HUD cost parameters for the area of Yuma, Arizona in 1972. (Plaintiff's Exhibit 47).

66. Urbatec's projected profit based on its cost studies and HUD's parameters for construction of The Project was $277,400.00.

67. From June 1, 1972 through November 10, 1972 Urbatec rendered the following services having the following reasonable value to the County of Yuma.

(a) Plans and specifications for the subject project were valued at $64,250, were 80% completed as of November 10, 1972, thus, having a value of $51,400 (Plaintiff's Exhibit 5), and

(b) A completed developer's package consisting of sites, design, plans and

specifications which met both the Authority's and HUD's requirements, having a value of $75,000. (Plaintiff's Exhibit 5).

68. Plaintiff was damaged as follows as the direct and proximate result of the County's said breach of contract and lost profits on construction: $75,000 for developers's [sic] fee and overhead allowance, $51,400 for plans and specifications to the point of completion by plaintiff, $55,366 out of pocket expenses to plaintiff.

69. Urbatec incurred the following costs between June 1, 1972, and on or about November 10, 1972:

(a) $14,000 for attorney fees for zoning, Urbatec office in Yuma, travel, lodging and food of Urbatec personnel in Yuma, a secretary in Yuma, a trailer in Yuma, and for telephone.

(b) $13,333 for John MacLaurin, Urbatec's general contractor working full-time on The Project during said period.

(c) $13,333 for Young Woo, Urbatec's architect, working full time on The Project during said period.

(d) $4,444 for Urbatec's president and general counsel, Barton L. Schuman, spending one-third of his time on The Project during said period.

(e) $3,033 for Urbatec's construction and field superintendent, Joe Breazeale, who spent two months in Yuma devoting full time toward The Project during said period.

(f) $290 for an automobile for Joe Breazeale during said two-month period.

(g) $4,800 for its secretary in its Los Angeles office and $2,133 for its rent in its Los Angeles office during

said period.

In the event the foregoing findings of fact should be more appropriately conclusions of law, they will be so interpreted.

CONCLUSIONS OF LAW

1. Jurisdiction is vested in this Court by virtue of diversity of citizenship in that plaintiff is a California corporation, that defendant County of Yuma is a political sudivision of Arizona and that the individual named defendants are residents of the State of Arizona. In addition, the claim sought by plaintiff exceeds the sum of $10,000. (See 28 U.S.C.A. §§ 1332 and 1441.)

2. At all times relevant to the subject litigation, the Housing Authority of the County of Yuma was the duly authorized agent of the County for the construction, maintenance, operation and management of housing projects in Yuma County. (Plaintiff's Exhibit 1.)

3. By virtue of the County's Resolutions of May 2, 1955, (Plaintiff's Exhibit 1) and May 1, 1972 (Plaintiff's Exhibit 4) the County duly authorized The Authority to do all things reasonable and necessary to secure from HUD a contract or contracts for loans and annual contributions for The Project and to develop and administer The Project.

4. The Authority and Charlene Maloney, as its Executive Director, were acting within the scope of said agency and authority as to all the acts they performed to develop The Project from May 1, 1972, until November 8, 1972, (when The Authority resolved to cancel The Project) including but not limited to the following acts:

(a) Selecting Urbatec's proposal

from among the five proposals submitted. (Plaintiff's Exhibit 6).

(b) Executing the June 14, 1972, approval letter to Urbatec. (Plaintiff's Exhibit 9).

(c) Coordinating the planning and development tasks on The Project to be performed by The Authority, the County, HUD and Urbatec.

(d) Participating in the approval of design factors and specifications with HUD throughout said period and at the conferences of June 22, September 20 and September 21, 1972. (Plaintiff's Exhibit 14 and 25).

(e) Instructing Urbatec on November 2, 1972, to prepare final plans and specifications for The Project. (Plaintiff's Exhibit 30).

(f) Forwarding to The County Board of Supervisors for its approval and signing the documentation required for the Annual Contributions Contract on August 31, 1972. (Plaintiff's Exhibit 22).

5. The County, through its Board of Supervisors, ratified the selection of Urbatec's proposals, its sites, and costs when it adopted and executed the Cooperation Agreement with the City of Yuma after having full knowledge of the Authority's selection of Urbatec's proposal, its sites, and its costs. (Plaintiff's Exhibits 10 and 11).

6. The Authority's tentative approval letter of June 14, 1972 (Plaintiff's Exhibit 9) constitutes a contract between the County and Urbatec.

7. Said contract contained certain conditions that were understood by all parties to be the following:

(a) Approval by HUD of the land

cost.

(b) Approval by HUD and the Authority of project design and Urbatec's meeting HUD requirements on The Project.

(c) The scheduling of remaining stages for the development of The Project. (Plaintiff's Exhibit 9).

8. Urbatec satisfied all the conditions required by the June 14, 1972 approval agreement. (Plaintiff's Exhibit 9, 32, 14, 25, 28 and 29).

9. The fact that the parties to the June 14, 1976 [sic] approval letter agreed to the entering into two subsequent agreements does not mean the June 14, 1972 approval letter was not a contract in that: (a) all material terms (including the requirement that Urbatec must comply with all HUD requirements for The Project) were set forth in the June 14, 1972 approval letter and (b) all the terms of the subsequent agreements for the parties, i.e. the Letter of Intent and Contract of Sale were already known by the parties by virtue of said agreements being expressly set forth in one of the HUD regulatory handbooks entitled HUD Low-Rent Handbook, Circular 7420.1, at Appendices 10 and 12. (Plaintiff's Exhibit 9 and 5A).

10. Plaintiff Urbatec performed all terms, conditions, duties and responsibilities on its part to be performed in the development of The Project and in accordance with said contract, the June 14, 1972 approval letter. (Plaintiff's Exhibit 9).

11. The County's promises in the June 14, 1972 approval letter (Plaintiff's Exhibit 9) were such that the County should have reasonably expected them to induce action of a definite and

substantial character on the part of Urbatec and did in fact induce such action and thus said promises are binding in that injustice can be avoided only by the enforcement thereof.

12. The County breached and repudiated said contract (Plaintiff's Exhibit 9) by the Authority's resolution of November 8, 1972, (Plaintiff's Exhibit 33) and the County's resolution of December 4, 1972. (Plaintiff's Exhibit 38).

13. The repudiation of said June 14, 1972, agreement arose out of opposition on the part of certain Yuma citizens to having a low-rent federally subsidized housing project to be occupied by persons qualified for federal housing subsidies, including black and brown persons, in the City of Yuma, and as such was discriminatory and illegal.

14. Nothing in federal statute or Arizona law allows a County, having validly declared a need for federal assistance for low-rent housing and having executed a Cooperation Agreement and tentative approval letter (Plaintiff's Exhibits 9 and 5A, Appendix 4) to thereafter cancel the agreements and withdraw from the program. (See Cuyahoga Metropolitan Housing Authority v. Harmody, (1973 6th Cir) 474 F.2d 11022.

15. Once a County brings into operation a housing authority and approves a project and enters into a cooperation agreement and tentative approval letter, there is nothing left to be done by either contracting party except to perform administratively whatever is necessary to carry the agreements into effect. (Cuyahoga, supra.)

16. Plaintiff was damaged as follows

as the direct and proximate result of the County's said breach of contract: loss of profits on construction; $75,000 for developer's fee and overhead allowance; $51,400 for the plans and specifications created by plaintiff for The Project, and $55,366 for out of pocket expenses.

17. Inasmuch as the construction of The Project was never undertaken, it is difficult to assess the amount of damages for loss of profit had The Project been completed. It would appear that any calculation attempted would be speculative in nature. It would be reasonable to conclude, however, that a conservative estimate of the damage to plaintiff as a result of its being deprived of the opportunity to earn a profit under the contract would be conservatively estimated at $75,000.

18. Plaintiff properly mitigated its damages in that it immediately ceased work on The Project on or about November 10, 1972, when it learned of the Authority's action of November 8, 1972.

19. Plaintiff was not required to be qualified as a foreign corporation doing business in Arizona at any time up to and including December 4, 1972, because plaintiff's efforts consisted of the execution of a single contract and the planning and designing of The Project; it had not progressed to a stage of construction in Arizona.

20. That plaintiff was not required to have an Arizona building contractor's license at any time up to and including December 4, 1972, because plaintiff had not commenced construction as of said date.

21. The individual commissioners of The Authority did not exceed their legal

authority in regard to The Project at any time it was being developed, i.e. from May 1, 1972 - November 7, 1972.

22. Plaintiff is entitled to judgment against the County of Yuma in the amount of $256,766.

23. Defendants D. H. Trigg, F. A. Delaughter, Gordon V. Donaldson and Walter R. Johnson are not personally liable to plaintiff.

24. In the event the foregoing conclusions of law should be more appropriately interpreted as findings of fact, they shall be so interpreted.

DATED this 12th day of July, 1976.

/s/Walter E. Craig
United States District Judge

FILED
Jun 13 1120 AM '76

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

URBATEC, a California corporation,

Plaintiff,

v.

YUMA COUNTY, an Arizona County; D. H. TRIGG, F. A. DELAUGHTER, GORDON D. DONALDSON and WALTER R. JOHNSON,

Defendants.

CIV. NO. 73-159 PHX (WEC)

J U D G M E N T

Pursuant to the foregoing findings of fact and conclusions of law filed simultaneously herewith,

IT IS ORDERED, ADJUDGED AND DECREED that plaintiff shall have judgment against the defendant, County of Yuma in the principal amount of $256,766, with interest thereon as provided by law from the date of this judgment until paid, together with its costs of suit herein, as provided by law.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED as to Count II, judgment is hereby entered for defendants D. H. Trigg, F. A. Delaughter, Gordon D. Donaldson and Walter R. Johnson against plaintiff, each party to bear his or its costs as related thereto.

DATED this 12th day of July, 1976.

/s/Walter E. Craig
United States District Judge

Supreme Court, U. S.
FILED
JUL 25 1980
MICHAEL RODAK, JR., CLERK

No. 79-2024

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

URBATEC, a California corporation,

Petitioner,

vs.

YUMA COUNTY, an Arizona county,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

O'CONNOR, CAVANAGH, ANDERSON,
WESTOVER, KILLINGSWORTH &
BESHEARS, P.A.

By: George H. Mitchell

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-2024

URBATEC, a California corporation,

Petitioner,

v.

YUMA COUNTY, an Arizona County,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Respondent Yuma County, an Arizona county, opposes the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above-captioned matter, Urbatec v. Yuma County,

614 F.2d 1216 (1980), and urges the Court to deny the same.

ADDITIONAL STATUTE INVOLVED

Petitioner failed to include the following statute in its list of statutes involved in consideration of this case:

Ariz. Rev. Stat. §32-1153.

Proof of License Prerequisite to Civil Action

No contractor shall act as agent or commence or maintain any action in any court of a state for collection of compensation for the performance of any act for which a license is required by this chapter without pledging and proving that the contracting parties whose contract gives rise to the claim was a duly licensed contractor when the contract sued upon was entered into and when the alleged cause of action arose. Ariz. Rev. Stat., Vol. 10 at 544.

QUESTION PRESENTED FOR REVIEW

Does the Opinion of the court below properly hold that Arizona law controls the scope of available remedy where the contract sought to be enforced would have been between an Arizona county and a California contractor to build low-income housing that was to be subsidized by the federal government?

STATEMENT OF THE CASE

Respondent deems the following material necessary to correct inaccuracies or omissions in the petitioner's statement of the case.

The Yuma County Housing Authority (hereinafter "the Authority") is an agency of Yuma County to which was delegated the authority to negotiate but not the authority to contractually bind the county. (Transcript at 149).

One of the proposals for development which was submitted in response to the Authority's advertisement for Turnkey project proposals came from petitioner Urbatec. Urbatec was not licensed as a contractor in Arizona, had never applied for a license in Arizona, and was not qualified to do business in Arizona as a foreign corporation. (Transcript at 52, 109-10)

On November 8, 1972, the Authority withdrew its application to the Department of Housing and Urban Development (hereinafter HUD) for Turnkey public housing (Exhibit 33) in which action the Yuma County Board of Supervisors concurred. (Exhibit 38). The housing project was never constructed, but Urbatec brought this action for breach of contract against Yuma County. Jurisdiction in the district court was based on diversity.

The Court of Appeals for the Ninth Circuit reversed a judgment entered by the district court in favor of Urbatec because it found that pursuant to the applicable Arizona statutes, Urbatec was precluded from maintaining its action without having secured an Arizona contractor's license. 614 F.2d at 1219.

ARGUMENT

Since the United States Housing Act was adopted in 1937, it has been the express policy of the United States to vest "in the local public housing agencies the maximum amount of responsibility in the administration of the low-rent housing program . . . ." (Section 1 of the United States Housing Act of 1937, 50 Stat 888, as amended by §501 of the Housing Act of 1959, 73 Stat 679, 42 U.S.C. §1401, now U.S.C. §1437.) There is, thus, an express statement of the congressional intent not

to preempt the right of states to legislate in the area of public housing. The state is, thus, free to exercise dominion over those areas that do not interfere with the purposes of the federal legislation as expressed in the congressional enactment and lawfully-adopted regulations. See, Florida Lime and Avocado Growers v. Paul, 373 U.S. 132 (1963)

The issue in this case does not involve the interests of low-income families to secure adequate housing, it involves the right of the State of Arizona to regulate the qualification of contractors seeking to do business within the state. Here, the proposed contract was to be between Yuma County and Urbatec. In the cases relied on by petitioner, that was not the case.

In Miller v. Arkansas, 353 U.S. 187 (1956), the facts involved much more than

a state licensing statute that obstructed a federal interest as as alleged by petitioner. There the contract in question was to be between the United States and a contractor for construction of facilities at an Air Force base. Here, though, the United States would not have been a party to the contract.

The interest of the State of Arizona in requiring contractors to be licensed to do business within the state does not conflict with any federal interest expressed in either the Public Housing Act or the HUD regulations adopted to carry it into effect.

While the federal regulatory scheme is specific and detailed, it does not evidence any intent to prevent the state from controlling the legal relationship between its political subdivisions and potential contracting builders of publicly-financed housing. Absent federal

regulations of such relationships there is, again, no preemption. Pennsylvania v. Nelson, 350 U.S. 497 (1956).

The Ninth Circuit correctly noted that the Arizona licensing statutes "are designed to protect members of the general public without regard to the impact upon individual contractors." 614 F.2d at 1218. As further noted by the Ninth Circuit at Footnote 4, 614 F.2d at 1219:

> Urbatec is not a subcontractor of the federal government, but a contractor of the state of Arizona. Applying the state licensing statute in this case could not frustrate any federal interest and would advance the state's proprietary interest in choosing a known contractor, as well as safeguard the public welfare. The limited federal interest involved would be similarly advanced.

Respondent respectfully submits that petitioner has advanced no compelling reason for the Supreme Court to exercise

its jurisdiction over this case and urges the Court to deny the petition for writ of certiorari.

Respectfully submitted this 23rd day of July, 1980.

O'CONNOR, CAVANAGH, ANDERSON, WESTOVER, KILLINGSWORTH & BESHEARS

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AFFIDAVIT OF SERVICE

GEORGE H. MITCHELL, being first duly sworn, deposes and says:

That he has made service of the foregoing brief by causing to be mailed the original and twenty-nine copies to:

Clerk
Supreme Court of the United States
Washington, D.C. 20543

and has caused to be mailed three copies of said brief to each of the following:

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DATED at Phoenix, Arizona, this 23rd day of July, 1980.

GEORGE H. MITCHELL

SUBSCRIBED AND SWORN to before me this 23rd day of July, 1980.

Notary Public

My commission expires:

August 9, 1981